
Santa Ana Regional Water Quality Control Board

February 20, 2019 *REVISED February 28, 2019*

Mr. Tomás Torres, Director
Water Division (WTR-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Torres.Tomas@epa.gov

REQUEST FOR U.S. ENVIRONMENTAL PROTECTION AGENCY (U.S. EPA) APPROVAL OF AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SANTA ANA RIVER BASIN (BASIN PLAN) TO ESTABLISH TOTAL MAXIMUM DAILY LOADS (TMDLS) FOR SELENIUM IN FRESHWATER, NEWPORT BAY WATERSHED, ORANGE COUNTY, CALIFORNIA

Dear Mr. Torres:

Pursuant to federal Clean Water Act (CWA) section 303(d)(2), we are submitting for U.S. EPA's approval an amendment to the Basin Plan to establish TMDLs for selenium in three freshwater drainage systems (Santa Ana-Delhi Channel, San Diego Creek, and Big Canyons Wash subwatersheds) in the Newport Bay Watershed in Orange County, California. The Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) adopted this amendment on August 4, 2017 under Resolution No. R8-2017-0014. The State Water Resources Control Board (State Water Board) approved the Basin Plan amendment on September 20, 2018 under Resolution No. 2018-0041.

The amendment documentation (portions of the Santa Ana Water Board administrative record and State Water Board administrative record) is being sent separately to Diane Fleck, U.S. EPA R9's liaison for the Santa Ana Water Board, for review of the TMDLs.

In accordance with your request, we are submitting this amendment concurrently to both U.S. EPA and the Office of Administrative Law (OAL). OAL's approval letter will be transmitted upon receipt.

In addition, the Regional Board is seeking the authority to provide compliance schedules consistent with the selenium TMDLs WLAs that are based on the current California Toxics Rule chronic criterion for selenium in freshwater and the associated implementation schedule for these proposed TMDLs. The WLAs and implementation schedule will be included in NPDES permits pursuant to CWA Section 303(b)(1)(c). Because CWA Section 303(c)(2) approval is required for

WILLIAM RUI, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

compliance schedules in NPDES permits for CTR criteria, and these are no longer authorized pursuant to the CTR or by the State Board's Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (Resolution No. 2008-0025) (hereafter, Compliance Schedule Policy), the Regional Board is asking for U.S EPA's approval of the implementation schedule for these TMDLs as a compliance schedule for incorporation into NPDES permits pursuant to CWA Section 303(c)(2).

With respect to a MS4 permit that contains effluent limits pursuant to CWA Section 402(p)(3)(B) and/or 303(d), the Regional Board has concluded that CWA Section 303(c)(2) approval for compliance schedule authorization is not required to allow a compliance schedule to achieve water quality standards in an MS4 permit. This is because the Compliance Schedule Policy does not apply to MS4 permits, as the Policy expressly only applies to NPDES permits with effluent limitations established under CWA Section 301(b)(1)(C). MS4 permits are not subject to CWA Section 301(b)(1)(C). Rather, effluent limits in MS4 permits are established pursuant to CWA Section 402(p)(3)(B), and if applicable, CWA Section 303(d). The Regional Board's conclusion about TMDL implementation plans and MS4 permits extends to all water quality standards, whether promulgated by USEPA or the State.

We look forward to receiving your approval of this Basin Plan amendment. If you have any questions on this subject, please contact Terri Reeder, Senior Engineering Geologist at (951) 782-4995 or (951) 906-1899, (Terri.Reeder@waterboards.ca.gov).

Sincerely,



Hope A. Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board

Enclosure

cc: (with amendment documentation)

Diane Fleck
Fleck.Diane@epa.gov
U.S. Environmental Protection Agency 75
Hawthorne Street
San Francisco, CA 94105

cc: (without amendment documentation)

Mr. David Smith WTR-2
Smith.David@epa.gov
U.S. Environmental Protection Agency 75
Hawthorne Street
San Francisco, CA 94105